

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STEVE STEWART, LAMONT BULLOCK,  
NATHAN RILEY, and DERRICK  
MUCHINSON,

Plaintiffs,

v.

JEFFREY BEARD, JOHN PALAKOVICH,  
JAMES FOUSE, and WILLIAM FELTON,

Defendants.

NO. 3:07-CV-1916

(JUDGE CAPUTO)

(MAGISTRATE JUDGE SMYSER)

**MEMORANDUM**

Presently before the Court is Magistrate Judge J. Andrew Smyser's Report and Recommendation ("R&R") of December 10, 2007 (Doc. 19). The R&R recommends that Plaintiff Derrick Muchinson be dismissed from the action, as he failed to file the proper *in forma pauperis* forms in connection with this action. On December 26, 2007, the Court received a letter from Plaintiff Muchinson, which states that he is "still in the hole," and that he "remember[s] I submitted my Forma Pauperis." The Court will construe this letter as a timely filed objection to the R&R.

Where objections to the magistrate judge's report are filed, the Court must conduct a *de novo* review of the contested portions of the report, *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(c)), provided the objections are both timely and specific, *Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984). In making its *de novo* review, the Court may accept, reject, or modify, in whole or in part, the factual findings or legal conclusions of the magistrate judge. See 28 U.S.C. § 636(b)(1); *Owens*

*v. Beard*, 829 F. Supp. 736, 738 (M.D. Pa. 1993). Although the review is *de novo*, the statute permits the Court to rely on the recommendations of the magistrate judge to the extent it deems proper. See *United States v. Raddatz*, 447 U.S. 667, 675-76 (1980); *Goney*, 749 F.2d at 7; *Ball v. United States Parole Comm'n*, 849 F. Supp. 328, 330 (M.D. Pa. 1994). Uncontested portions of the report may be reviewed at a standard determined by the district court. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985); *Goney*, 749 F.2d at 7. At the very least, the Court should review uncontested portions for clear error or manifest injustice. See, e.g., *Cruz v. Chater*, 990 F. Supp. 375, 376-77 (M.D. Pa. 1998).

Plaintiff Muchinson's objection states that he is sure that he submitted the proper forms for the *in forma pauperis* application. However, the Court has no record of the forms. In light of the objection, the Court will grant Plaintiff Muchinson's objection, and will order him to file the proper *in forma pauperis* forms with the Court within thirty (30) days.

An appropriate Order follows.

December 27, 2007  
Date

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge

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**ORDER**

NOW, this 27th day of December, 2007, upon review of Magistrate Judge J. Andrew Smyser's Report and Recommendation (Doc. 19), **IT IS HEREBY ORDERED** that:

1. Plaintiff Derrick Muchinson is to **FILE** the proper *in forma pauperis* forms within thirty (30) days of this order.
2. The case is **RECOMMITTED** to Magistrate Judge Smyser for further proceedings.

/s/ A. Richard Caputo

A. Richard Caputo

United States District Judge